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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. CHRISTOPHER SUNGHWA KANG, Defendant and Appellant.	A123342 (Alameda County Super. Ct. No. C155597)

Christopher Sunghwa Kang was convicted by a jury of sexual penetration of an unconscious victim with a foreign object in violation of Penal Code section 289, subdivision (d). He contends the evidence was insufficient to support the verdict, principally because the victim was not a credible witness. He also argues that the trial court erroneously admitted into evidence the victim's prior statements to police officers; excluded third party culpability evidence; and admitted improper expert testimony about rape trauma syndrome. We conclude that none of these contentions has merit and affirm the judgment.

BACKGROUND

The Prosecution Case

Jane Doe's 21st birthday party was held on a Saturday in September 2006, at her friend John Padua's fraternity house. There was music, dancing and alcohol at the party. Doe had five or six drinks and felt the effects of the alcohol, but was not drunk.

Doe's friend Glenn Carrere arrived at the party around 11:00 or 11:30 p.m. and was already drunk. By the time the party ended at around 2:00 a.m., Carrere was

unconscious in the bathroom. The bathroom was locked and Doe was unable to wake Carrere by pounding on the door and calling to him. Members of the fraternity pried the bathroom door open with a crowbar. Carrere was found with his pants down and vomit on his face and on the floor. Doe, Padua and another fraternity member cleaned Carrere up and sat him on a living room sofa. Carrere immediately slumped over onto his side.

Carrere seemed to be having trouble breathing, so Doe decided to stay with him rather than go home. She lay down on the couch with Carrere. He was to her right with his head on her stomach and her feet were over his legs. It was cold, so Doe covered Carrere with a blanket and Padua gave her a coat. Carrere did not awaken.

Defendant lived at the fraternity house, and had about eight to 10 drinks at the party. He was in the living room when Padua gave Doe the coat. Padua played a game of pool with defendant and then went upstairs to bed.

Doe dozed on and off, and she kept waking because of Carrere's snoring or her worry that he may have stopped breathing. She was tired and slightly felt the effects of the drinks she had at the party. Sometime after 4:15 a.m., she finally fell asleep. She thought someone came by her before she fell asleep, but she was not sure.

Sometime after 4:15 a.m., Doe felt someone's hand inside her shirt. The hand came from her left and touched her breasts on top of her bra. Doe was not fully awake and thought she was dreaming. The blanket was over her head, and Carrere was still in the same position on Doe's right with his head on her stomach. He was not moving at all. Doe reached for the hand and it moved away. She pulled the blanket down but kept her eyes closed, and fell back asleep.

Some time later Doe woke again and felt a hand in her shirt. It was coming from her left side, as before, but this time from the bottom, rather than the top, of her shirt. Carrere was still on Doe's right side and had not moved. The blanket was again over Doe's head. Doe reached for the hand and it moved out of her shirt. She pushed the blanket down, but again fell back asleep without opening her eyes. She assumed she was having a weird dream.

Doe woke up a third time because someone was touching her. She felt a limp hand on her right side, where Carrere was lying, and a hand crossing her torso from her left that was beneath her shirt and manipulating Carrere's limp hand. The blanket was covering her head. Again, Doe thought she must be dreaming and fell back asleep.

The next time Doe woke up, her feet had been moved off the couch and placed on the floor. Her blue jeans and underwear were down near her thighs and knees, and someone's fingers were thrusting in and out of her vagina. She still had the blanket over her head. Carrere remained to her right, but his head was no longer on her stomach. Doe was scared, shocked, and concerned for her safety. As she was trying to think what she should do, the fingers stopped touching her and she could feel hands pulling her pants further down to her ankles. Her feet were lifted off the floor.

Doe slammed her feet down, sat up, and opened her eyes. The blanket fell from her head and she saw defendant crouched down in front of her, with his hands where her feet had been. Carrere's hand flopped out from beneath her shirt. Doe had never seen defendant before. He looked Asian, had short to medium black hair, and was wearing a white long-sleeve shirt with green vertical stripes and a logo. Carrere still lay prone on the sofa. Doe yelled at defendant, "What the hell do you think you're doing?" Defendant did not respond, but instead stood up slowly and walked out of the room.

Doe was more angry than scared. She stood up, quickly pulled up her pants and followed defendant to the dining room, where she saw he was slumped back in a chair with his eyes closed. He was in the same striped shirt, and Doe noticed that he was wearing only undershorts. Doe slapped his face twice. Defendant opened his eyes and asked why Doe slapped him. She replied, "you know why I did that. I saw you in there, and you know what you did." Defendant remained seated and said nothing. Doe called him an asshole and then went upstairs to Padua's room. Carrere remained passed out on the couch.

Doe was upset, shocked and scared. She told Padua that someone downstairs touched her inappropriately or "manipulat[ed] her pants." She did not say the assailant touched or penetrated her vagina. The two went downstairs and Doe found defendant in

the kitchen. He was still in the striped shirt, but was now wearing jeans. Padua came through the kitchen doorway just when Doe found defendant and she told Padua that defendant was her assailant. Defendant looked shocked. He said something like "I don't know what she's talking about."

Padua said defendant was a fraternity member. The three of them went upstairs to Padua's room, where Doe recounted what had happened. Defendant said he had merely given Carrere and Doe a glass of water. At his instigation they went downstairs to the living room, and saw there were glasses of water on the table.

Doe was upset that defendant denied what he had done and was calling her a liar in front of Padua. She said she wanted defendant to leave, and he did. Doe and Padua then spoke for 15 or 20 minutes until Padua went upstairs to go back to sleep. Doe woke Carrere and told him that someone had molested her and touched her vagina. Doe did not appear to be under the influence of alcohol, but she was crying and visibly distraught. Around 7:00 a.m., Doe and Carrere left the fraternity house and walked to Doe's sorority. Carrere was not drunk, but he felt hung over.

Fraternity members met with defendant about the incident the next day. At first defendant denied that he had touched Doe, but when he was later asked he said he had been drunk and did not know whether he did it. Padua told defendant and fraternity president Nathaniel Lipanovich that he thought Doe only wanted an apology. The fraternity suspended defendant to appease Doe's sorority and advised defendant to apologize.

Doe did not want her family to find out about the assault and "wanted it to go away," so she did not initially call the police. Doe thought that "if I didn't make a big deal out of it, we could handle it ourselves and that I wouldn't have to actually go to the police. That I thought if I didn't go to the police, that I wouldn't have to really accept that it happened." Although she wanted to forget about the incident, she could not. Later that week Doe attended a meeting about the incident with her sorority president, the president of defendant's fraternity, and Padua.

Doe finally reported the assault to the university police on October 8, 2006, after she was sent home from work because she was visibly upset. Berkeley Police Officer Scott O'Donnell met Doe at the university police station, saw that she was upset and crying, and escorted her to the Berkeley Police Department, where he took her statement. Doe reviewed and signed the typed statement.

Several days later Doe agreed to Berkeley Police Officer Tim Kaplan's request to conduct a recorded pretext phone call with defendant. The call was made and recorded on October 12, 2006, and later played for the jury. During the call defendant initially denied any responsibility for the incident, but ultimately he apologized to Doe and said he felt that his expulsion from the fraternity was justified.

Officer Kaplan conducted a recorded interview of defendant on October 16, 2006. When Officer Kaplan asked whether defendant thought he "did anything" to Doe, defendant replied: "I—I really—I really don't, um, I—like I don't see that I—I'm the kind of person who is capable of—of these things, even, um—even when I was not remember[ing] anything, but, um, I mean I—I guess—because I don't remember, I can't be 100 percent sure, but I don't have—I don't think I could have." Kaplan continued the interview: "Q: Do you think it actually happened? You know the way that she says that it happened, did it actually happen? [¶] A: I—I guess like—I don't know that nothing happened, um, to her, she seems pretty, um—very upset and, uh—about this situation, so I don't think that—that nothing happened to her, but, um, as far as my involvement, I'm—I'm not too sure. I—I spoke with her and, uh, I guess, um, she—she seems more certain that I am—am involved so, I—uh, I don't know." Defendant also explained his apology to Doe, telling Officer Kaplan: "I apologize, um, because I—I guess I thought she needed to hear one from me and I apologize, I guess in case that I actually was involved, I mean, I—I still don't think that I was, but if I did it then I did it and I'm sorry for doing it, so I apologized for those reasons." Defendant said that he did not remember anything that happened between the time he placed the water glass on the table and when he was slapped by Doe.

During the interview, defendant prepared a written statement. He said he was upstairs getting ready for bed and had taken off his pants when he went downstairs to ensure that the main door to the house was locked. He saw two people on a couch and heard them groaning. He asked them if they were okay, got no reply, and brought them a glass of water from the kitchen. The next thing he remembered was being woken by a slap. He went upstairs, put his pants on and then went to find the girl who slapped him. He met with the girl and a fraternity member, then went back to his room "and sat for a while thinking if I remembered anything from her account. I would not."

At Officer Kaplan's suggestion, at the end of the interview defendant wrote and signed a letter of apology to Doe. His note said: "I'm incredible [*sic*] sorry for what happened after your birthday party. I am sorry for any involvement in the events that took place. As I have told you before I was there—or I wish there were some other words to express how sorry I am, that I'm capable of these kinds of actions, weigh heavily on me. I hope the pain and stress of that night will go away soon, and again I'm sorry for causing them. I hope you can find some way to forgive me, though I admit you owe me no favors, I am truly very sorry, sincerely Chris Kang."

Officer Kaplan interviewed Doe again on November 14, 2006, and this interview was recorded. Doe also identified defendant's photo in a photographic lineup.

Marcia Blackstock testified as an expert witness about the emotional, psychological and physical reactions experienced by victims of sexual assault that is referred to as rape trauma syndrome. Blackstock did not meet Doe and did not know the facts of this case. The sole purpose of her testimony was to give a general explanation of rape trauma syndrome. Blackstock testified that the syndrome includes three phases. First is the acute crisis phase, which typically lasts from two weeks to two months after the assault when the victim experiences extreme emotions of denial, shock, fear, guilt, shame, anger, hopelessness, helplessness and powerlessness. The victim is in denial in the second phase, says she is fine and tries to live normally. But she is really suppressing her emotions and limiting her activities and life potential. In the third phase, which is not experienced by all victims, the emotions resurface and the victim is better able to

confront and deal with them. The internal emotional process experienced by victims is universal, but their outward responses may vary tremendously and appear illogical.

Blackstock testified that their emotions affect the way victims report attacks to police, friends and family. Most victims never report the attack to the police and many do not even tell friends or family. Victims typically delay reporting sexual assault for a period of two hours to two weeks. They delay due to fear of reprisals; fear of the responses they will receive from others; their embarrassment; their reluctance to worry or burden their family; feelings of denial and self-blame; feelings they will bring shame on their family, and, if the victim knows the perpetrator, they may have concern over the legal consequences to them. A victim's ability to recall specific details of the assault is impaired due to shock of the event.

On cross-examination Blackstock testified that if a person believes an assault took place, even if it did not, she may experience the same emotions and expressions as an actual assault victim.

The Defense Case

Nathaniel Lipanovich was president of defendant's fraternity in October 2006. The night after Doe's birthday party, Padua told him Doe had made accusations against defendant. Padua brought defendant before the fraternity's executive committee to tell his version of the events. Padua and Lipanovich were concerned about the fraternity's image in the Berkeley Greek community, particularly because Doe was a member of a sorority. Defendant told the committee that while there were parts of the night he did not remember, he did not believe he had done what he was accused of. Lipanovich and Padua thought everything would be smoothed over and Doe would be happy if defendant apologized, so even though Lipanovich did not believe Doe's allegations they advised defendant to call Doe and express remorse. Lipanovich "wanted to do whatever it took to make her happy and smooth the situation out."

Lipanovich and Padua met with Doe and her sorority president a week later. Doe appeared upset and emotional. She said she was awakened when someone tried to unbutton her pants, at which point the person calmly walked away and went upstairs.

After she found Padua they ran into defendant and she accused him. Doe did not say that someone had touched or inserted a finger into her vagina. Lipanovich testified that he was shocked when he first heard such allegations less than 12 days before trial.

The fraternity unofficially suspended defendant from the social aspects of chapter meetings because Doe wanted a show of remorse, defendant was very busy getting ready to graduate in the spring and was not attending the meetings anyway, and the fraternity thought it would be a good public relations move. The fraternity was supposed to be a "dry house," so there was concern that the national office not learn there had been alcohol at a fraternity function.

The Verdict and Posttrial Proceedings

The jury found defendant guilty as charged. Defendant moved for a new trial on the grounds that (1) the evidence was insufficient to support the conviction; (2) the court erroneously precluded the defense from presenting evidence that Carreras had a romantic "crush" on Doe; (3) the court erred when it permitted the prosecution to introduce Doe's entire statements to Officers O'Donnell and Kaplan; and (4) the court permitted the prosecution to introduce improper expert testimony. The court denied the motion. Kang was sentenced to five years of probation subject to a condition that he serve the first six months in jail. This appeal timely followed.

DISCUSSION

I. *Sufficiency of the Evidence*

Defendant argues there was insufficient evidence to support the verdict. His argument is premised on his view that Doe's testimony was "dubious" because "it appears likely that her insistence that Kang touched her arose from a misunderstanding, intoxication, fatigue, a series of dreams, or a combination of all these factors which resulted in her confabulation." He says his own statements do not establish guilt, and when taken as a whole, the evidence leaves a substantial doubt that an assault actually occurred or that he, not Carrere, was the assailant. To assess defendant's argument, "we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of

solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Stanley* (1995) 10 Cal.4th 764, 792-793.) When the trial court independently weighed the evidence to rule on defendant's new trial motion, it found beyond a reasonable doubt that the assault was committed and that defendant was the assailant. Having independently reviewed the record, we conclude that it amply supports that finding.

Defendant attacks Doe's testimony because she "admitted time and again that she thought she was asleep or dreaming during much of the alleged assault"; because her eyes were closed and/or covered by a blanket until after the assault; and because there were no other witnesses or physical evidence. Therefore, he asserts, the most reasonable and compelling inference to be drawn from the evidence is that her accusation "was a product of her confused and confabulated events and dreams." But the jury rejected any such inference, and instead credited Doe's testimony that she awoke during the assault and that defendant was her assailant. Her testimony supports the verdict, and we have no power to second-guess the jury's assessment. As a reviewing court we accord due deference to the jury and not substitute our evaluation of a witness's credibility for that of the fact finder. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) " '[I]t is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt. " 'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.' " ' " (*People v. Stanley, supra,* 10 Cal.4th at pp. 792-793; *People v. Bean* (1988) 46 Cal.3d 919, 932-933.)

Even were we to consider it plausible that the evidence could be reconciled with defendant's innocence, we would not reverse this judgment. So long as there was evidence from which the jury could conclude that Doe perceived and independently recalled the attack, it was up to the jury to decide whether her recollection was accurate. (See, e.g., *People v. Zambrano* (2007) 41 Cal.4th 1082, 1139-1141.)

II. *Admission of Officers' Statements*

The trial court admitted into evidence the entirety of a typewritten statement Doe provided for Officer O'Donnell and a complete videotape of her interview with Officer Kaplan. Defendant contends the trial court erred in permitting the prosecution to introduce Doe's prior statements in their entirety. We conclude the statements were properly admitted under Evidence Code sections 791 and 356.

A. Background

A central focus of defendant's strategy was an attack on Doe's credibility. Defendant's opening statement described her as "a heavy drinker, who on October 1st, 2006 was so saturated with booze that she was unable and is unable to distinguish reality from a dream. . . . [T]he evidence will show that Jane Doe is completely mistaken about what actually happened. She was mistaken because her body and her mind was saturated with alcohol, and surely alcohol makes both perception and memory mighty deficient. And so it is in this case and the evidence will show that Jane Doe willingly and voluntarily drank her favorite drinks and a lot of them. . . . And the evidence will show that she drank so much that she lost perception of realities. The evidence will show that she then told this story on many different occasions, a story that changes each time she tells it. A story that has never been consistent because the evidence will show that even from moment one, she wasn't quite sure whether or not this really happened. . . . [¶] . . . The verbal evidence comes essentially from Jane Doe and the evidence will show that in this case, the prosecution's reliance on her verbal testimony is grossly misplaced for it is the verbal testimony that is saturated with alcohol. And the evidence will show that people who drink all night cannot remember details. Often they make things up; they then testify about things that they are not at all certain about. And so it is, in this case, and the testimony that the prosecution will rely on is fraught with liquor, replete with I don't recall, I'm not so sure; confused, mistaken; filled with speculation, given to guess, approximation, and not to surprisingly flat out, blatant fabrication. It is expected that Jane Doe's testimony will be bizarre and patently unrealistic. Additionally, her testimony

before you will be contradicting, confusing about many of the vital details of the night in question."

When defense counsel cross-examined Doe, he inquired about her testimony at the preliminary examination and her statements to Officers O'Donnell and Kaplan. He pointed out inconsistencies in her story as she retold versions to the court and the police. Consistent with his opening statement, defense counsel cross-examined Doe on his theme that she was unsure whether the assault really happened and that her professed certainty about the events at trial was a fabrication. After probing Doe's apparent uncertainty at various times, defense counsel asked Doe to refresh her recollection by reading her preliminary hearing testimony that she told Officer O'Donnell "one of the reasons why [she] didn't report right away is [she] didn't know if it really happened or not."

When the prosecutor later questioned Officer O'Donnell about the statement he obtained from Doe, defense counsel objected on hearsay grounds. After a sidebar conference, the court permitted the prosecutor to read the entire statement to the jury. The court later clarified its ruling by saying: "I had indicated on the record at the side bench conference, that aspects of the statement might be viewed as prior consistent statement. And it was also pointed out to me at the conference by [defense counsel] and the district attorney that there were aspects of it that were also inconsistent with her testimony. [¶] The upshot is that I determined that the entirety of the statement could be read into the record under a combination of consistent/inconsistent statements and then insofar as they were neither consistent [n]or inconsistent, that the remainder was admissible under [section] 356 of the Evidence Code in order to provide the [context] of the consistent and inconsistent portions. [¶] At any rate, that was the basis of my ruling and I wanted the record to be clear."

Defendant argued that Doe's statements to Officer O'Donnell were not admissible as prior consistent statements under Evidence Code section 791, subdivision (b) because he was not claiming that she recently fabricated her testimony or that she harbored improper bias or motive. The court disagreed. When it denied defendant's new trial motion, the court pointed to defense counsel's extensive cross-examination of Doe about

whether she had merely dreamed of the incident, and to counsel's reliance on Doe's prior testimony in the preliminary hearing to imply she did not know whether the assault had actually happened. The court reasoned that Doe's earlier statements to the officers that she awoke when she felt fingers in her vagina and " 'knew that what was happening was real and not a dream' " were admissible consistent statements "crucial to the implication that was made that even at the preliminary hearing that she had stated that she didn't know whether it was a dream or whether it was reality. And so for that reason, I feel the essential issue was within the body of the statement to Officer O'Donnell, and her similar statement to Officer Kaplan."

The prosecutor proffered Doe's tape-recorded statement to Officer Kaplan during Kaplan's testimony. The court asked if there were any objection to playing the statement. Defense counsel answered, "No, your Honor." The entire 38-minute tape was played to the jury.

B. Analysis

Evidence Code section 791 authorizes the admission of prior consistent statements made by a witness under specified conditions to support the witness's credibility. Under section 791, "Evidence of a statement previously made by a witness that is consistent with his testimony at the hearing is inadmissible to support his credibility unless it is offered after: [¶] . . . [¶] (b) An express or implied charge has been made that his testimony at the hearing is recently fabricated or is influenced by bias or other improper motive, and the statement was made before the bias, motive for fabrication, or other improper motive is alleged to have arisen." Thus, "Evidence Code section 791 permits the admission of a prior consistent statement when there is a charge that the testimony given is fabricated or biased, not just when a particular statement at trial is challenged." (*People v. Kennedy* (2005) 36 Cal.4th 595, 614.) Even an implied charge that a witness fabricated her testimony is sufficient to support the admission of prior statements consistent with the witness's testimony at trial. (*Ibid.*; *People v. Pic'l* (1981) 114 Cal.App.3d 824, 862-863.)

Here, defense counsel used Doe's preliminary hearing testimony in his cross-examination to imply that she lied when she earlier testified that she was certain the assault occurred. This strategy rendered it permissible for the prosecution to show that Doe's trial testimony was consistent with the statements she made to Officers O'Donnell and Kaplan long before she testified in the preliminary hearing. Defendant disputes this conclusion because the theory articulated in his opening statement was not that Doe had recently fabricated her story, but rather that she "*never* properly recalled the details of the assault and that her testimony at trial would reflect this failure of memory." But in the trial Doe was certain she was awakened by fingers in her vagina and that defendant was her assailant. Defense counsel's questions clearly suggested that Doe fabricated her testimony sometime after the preliminary hearing. Contrary to defendant's argument, the "temporal requirement" of Evidence Code section 791, subdivision (b) is fully satisfied because Doe's consistent statements were made long before her allegedly fabricated trial testimony. Accordingly, Doe's prior consistent statements were admissible under section 791, subdivision (b).

Defendant argues that Doe's statement to Officer O'Donnell was also inadmissible for another reason. Rather than being consistent with her trial testimony, he says this statement conformed to her concession at the preliminary hearing that she was not certain whether the assault had happened. Defendant's argument is based on a distortion of Doe's statement to O'Donnell. Although Doe seemed to concede she had told O'Donnell that she did not know whether the assault was real and that she so testified at the preliminary hearing, in context, her statement to O'Donnell makes clear that her apparent concession referred *only* to what occurred before Doe felt someone's fingers in her vagina. When that occurred, she told O'Donnell, "I woke up to the point where I was more aware than before, and I knew that what was happening was real and not a dream." Thus, her prior statement to Officer O'Donnell was *consistent* with her trial testimony.

Defendant's misleading characterization of a fragment of her statement is what makes it seem *inconsistent*.[1]

Evidence Code section 356 provides: "Where part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by an adverse party; when a letter is read, the answer may be given; and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it understood may also be given in evidence." Defendant alternatively argues that even if parts of Doe's statements were admissible, it was error to allow the prosecution to introduce the statements in their entirety under section 356. The trial court determined the entire statements were admissible as a combination of consistent and inconsistent statements, "and then insofar as they were neither consistent or inconsistent, that the remainder was admissible under [section] 356 of the Evidence Code" to provide the context for the independently admissible portions. We review the court's determination for abuse of discretion. (*People v. Parrish* (2007) 152 Cal.App.4th 263, 274.)

" ' "In applying Evidence Code section 356 the courts do not draw narrow lines around the exact subject of inquiry. 'In the event a statement admitted in evidence constitutes part of a conversation or correspondence, the opponent is entitled to have placed in evidence all that was said or written by or to the declarant in the course of such conversation or correspondence, provided the other statements have *some bearing upon, or connection with,* the admission or declaration in evidence . . . .' [Citation.]" '

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[1] The relevant cross-examination at trial was as follows: "Q. [Officer O'Donnell] asked you a question about the delay in report getting to law enforcement, didn't he? [¶] A. Yes. [¶] Q. And do you remember you said something to the effect that you didn't report it because you didn't know if it was real or not? [¶] A. Yes. [¶] . . . [¶] Q. Let's look at your preliminary examination transcript. Let's see if that's exactly what you said. It's page 54 at the bottom up to 55. If you can read it to yourself and we'll see if that's exactly what you said. [¶] A. (Witness complying.) [¶] Q. Does that refresh your recollection? [¶] A. Yes. [¶] Q. In fact, that's what you did say, right? [¶] A. I did say that. That is correct." On redirect examination, Doe testified that she knew the assault was real and not a dream once she had fully awoken.

[Citation.] Further, the jury is entitled to know the context in which the statements on direct examination were made." (*People v. Harris* (2005) 37 Cal.4th 310, 334-335.) The trial court correctly determined that Doe's statements to Officers O'Donnell and Kaplan contained admissible consistent and inconsistent statements, and it reasonably determined that the statements in their entirety would provide context that would permit the jury to evaluate defense counsel's claims of inconsistencies and fabrication in Doe's story.

We are also unpersuaded that the court's admission of Officer O'Donnell's report was an abuse of discretion because defendant was unduly prejudiced by multiple hearsay contained within it. According to the report, Doe said the president of defendant's fraternity "told us that Chris's story was that he had blacked out and didn't remember anything. That the members . . . ultimately decided to revoke Chris's membership and possibly evict him from the fraternity."[2] Defendant argues this statement was highly damaging because there was no other evidence that he blacked out, and it suggested he told his fraternity brothers a different "story." We disagree. Fraternity president Lipanovich testified that defendant told him there were parts of the night of the assault that he did not remember. Defendant also told Officer Kaplan he did not remember anything that happened between when he placed the water glass on the table and Doe slapped him. In light of this evidence, the alleged multiple hearsay provided little, if any, details that the jury did not hear from other sources. The court's decision to admit the statements under the rule of completeness was not an abuse of discretion.[3]

III. *Third Party Culpability Evidence*

Defendant also contends it was prejudicial error for the court to prevent him from asking Doe whether Carrere had a "romantic crush" on her. He argues that allowing such

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[2] The statement was not inadmissible hearsay because it was admitted for the nonhearsay purpose of providing context for Doe's statements to Officer O'Donnell. (See *People v. Harris* (2005) 37 Cal.4th 310, 335.)

[3] In light of our conclusion, we will not consider whether defendant waived his objection to the introduction of Officer Kaplan's statement by failing to object to it.

a question would show that Carrere had a motive to sexually assault her while she slept. We disagree.

A. Background

Before trial, the court granted the prosecution's in limine motion to preclude questions about Doe's prior sexual conduct unless the requirements of Evidence Code section 782 were satisfied. During cross-examination, defendant asked Doe: "Now, [Carrere], it's fair to say, he had a crush on you, didn't he?" The prosecutor objected and the court sustained the objection. Defendant did not pursue the line of questioning further with either Doe or Carrere, who testified for the prosecution.

Defendant later argued in support of his new trial motion that this ruling erroneously and prejudicially precluded him from presenting evidence that it was Carrere, not defendant, who was the assailant. When the trial court denied the motion, it explained: "First of all, the sustaining of the objection to the question [to] Ms. Doe about whether Glen Carrere had a crush on her, the grounds of the objection were broadly stated. The hearsay rule—and we took this up in our 782 rulings—there are several sections of the hearsay rule that the evidence is inadmissible, one of them being section 702 of the Evidence Code which requires personal knowledge of a witness. In other words, how can Miss Doe know who does or does not have a crush on her. The other being section 800(a) and (b), whether the question calls for inadmissible opinion, and it would seem to me that that's inadmissible opinion, so sustainable on the relevance ground. If there's an implication that Ms. Doe knows that Mr. Carrere has a crush on her because of prior sexual activity, the jury might draw that and therefore the objection would be sustained properly under section 352."

B. Analysis

Evidence Code section 782 requires a motion and affidavit demonstrating relevance before a defendant may offer evidence of a complaining witness's sexual conduct to attack her credibility. As a preliminary matter, we agree with defendant that the solicited testimony was not necessarily inadmissible under section 782. Here, as defendant observes, the question was not directed to Doe's sexual conduct or credibility

but to "Carrere's attraction to [Doe] and *his* state of mind." Nonetheless, the court properly sustained the objection.

Defense counsel asked whether Carrere had "a crush" on Doe. But testimony is inadmissible unless the witness has personal knowledge of the matter (Evid. Code, § 702), and there was no indication that Doe had any knowledge as to whether Carrere harbored a romantic interest in her. Defendant argues that Doe might have been aware of Carrere's feelings from observing his actions, conduct and behavior, but that is not what she was asked. The question she was asked was whether Carrere had a "crush" on her—i.e., his "state of mind." The court correctly found that question was improper, and defense counsel did not pursue the topic by asking questions that might have elicited Doe's personal knowledge of Carrere's feelings for her.

Moreover, defendant's claim that he was prejudiced by this ruling is particularly unpersuasive. Defendant claims that "[e]vidence of Carrere's crush would have added enormous weight to [his] defense by demonstrating that Carrere had a motive to perpetrate the crime." Hardly. This trial was about a sexual assault committed against an unconscious victim. Carrere had imbibed that night to the point of vomiting and unconsciousness. In context, it is scarcely plausible that evidence Carrere had romantic feelings for Doe would significantly bolster the defense theory that he, not defendant, was the assailant. Indeed, the jury might just as readily feel that someone who harbored personal feelings for Doe would be less, not more, likely to sexually assault her while she was sleeping.

IV. *Expert Testimony*

Lastly, defendant contends the prosecution's expert on rape trauma syndrome exceeded the limits on her testimony imposed by the trial court and permitted by case law. The contention fails as to both points.

The prosecutor moved in limine to allow expert testimony about rape trauma syndrome. Defendant indicated he did not object to the testimony provided it was limited to the fact that not all sexual assault victims immediately report an assault to the police. The court allowed the prosecutor to call the expert witness, "just so long as she's not

asked a hypothetical involving the facts of this case, but only as it is based on her expertise, based on her findings of sexual assault victims." Defense counsel commented that "it sounds like the only thing she can really talk about, she can discuss that some people were treated who did not report it immediately and that's it." The court agreed.

Marcia Blackstock was qualified to testify as an expert on emotional, psychological and physical reactions to sexual assault. She testified without objection. Defendant unsuccessfully argued in his new trial motion that Blackstock's testimony flouted the court's limiting order and exceeded the scope permitted by law.

The trial court got it right. Defendant complains that Blackstock (1) testified that rape trauma syndrome is generally composed of three phases, and that many victims never progress from the second (denial) to the third (reorganization) phase; and (2) discussed the typical emotional reactions of sexual assault victims. But her testimony about these commonly experienced emotional responses to sexual assault explained why victims in general will often delay reporting an assault, or do not report at all. It was therefore squarely within the parameters established by the trial court's in limine ruling.

The testimony was also within the parameters established by case law. The governing rules are well settled. As our Supreme Court has explained, "In *People v. Bledsoe* (1984) 36 Cal.3d 236, 248-251, we held that such testimony is inadmissible when offered to prove that the complaining witness has in fact been raped. But we recognized, as other courts had held [citation], that such testimony is admissible to rehabilitate the complaining witness when the defendant impeaches her credibility by suggesting that her conduct after the incident—e.g., a delay in reporting—is inconsistent with her testimony that she was raped. We reasoned that 'in such a context expert testimony on rape trauma syndrome would play a particularly useful role by disabusing the jury of some widely held misconceptions about rape and rape victims, so that it may evaluate the evidence free of the constraints of popular myths." (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1300.) The prosecution utilized Blackstock's expertise in this case precisely as permitted by *Bledsoe*. Blackstock testified only after defense counsel cross-examined Doe about her delay in reporting the assault. Defendant complains that

Blackstock's testimony went beyond that allowed by *Bledsoe* in that it encompassed "the severe emotional trauma that 'survivors' often suffer." But Blackstock's testimony about the trauma experienced by victims was integral to her explanation of why victims delay reporting sexual assaults. Moreover, the jury was correctly instructed that it could consider Blackstock's testimony "only in deciding whether or not Jane Doe's conduct was not inconsistent with the conduct of someone who has been sexually assaulted and in evaluating the believability of her testimony." The trial court's admission of that testimony was not error.

DISPOSITION

The judgment is affirmed.

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Siggins, J.

We concur:

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Pollak, Acting P.J.

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Jenkins, J.